Hoagland, 114 U. S. 606. A city ordinance which authorizes the seizure and sale of certain animals running at large divests the owner of his property without due process of law. *Donovan v. M. & C. of Vicksburg*, 29 Miss. 248; *Poppen v. Homes*, 44 Ill. 362. A law authorizing the destruction of gaming tables, which are *per se* public nuisances, without trial and compensation, was held unconstitutional in *Lowry v. Rainwater*, 70 Mo. 152, but this is opposed by *M. M. Co. v. Van Keuren*, 23 N. J. Eq. 251; *Cooley, Const. Lim.* 572; *Coe v. Schultz*, 47 Barb. 64; and these last citations are upheld in *Com. v. Kelley*, 163 Mass. 169; *Cook v. Gregg*, 46 N. Y. 439, as to articles, such as fishing nets, declared by statute to be *per se* nuisances. The legislature could not decree the forfeiture of property, not a nuisance *per se*, because it is used in committing a nuisance. *Com. v. Coffee*, 9 Grey 134; *Gray v. Ayers*, 7 Dana 375. The power to abate a nuisance does not extend to the destruction of private property used in creating such nuisance, which is susceptible of use for a lawful purpose. *Chicago v. U. S. & T. Co.*, 154 Ill. 224.

CONSTITUTIONAL LAW—EQUAL PROTECTION—TAXATION—PRIVATE CORPORATION.—ST. LOUIS, ETC., R. CO. V. DAVIS, 132 FED. 629.—*Held*, that the fourteenth amendment of the Constitution of the U. S. forbidding any state from denying "to any person within its jurisdiction the equal protection of its laws," is not violated by a tax on railroad property to nearly its full value when other property in the state is valued at only about 30%.

A state is prohibited by the fourteenth amendment from discriminating between different persons of a class. *Santa Clara County v. Southern Pac. R.*, 118 U. S. 394. It may, however, impose different taxes on different classes, provided the classification is reasonable. *Railroad Tax Cases*, 13 Fed. 722. What is reasonable depends upon the particular circumstances in each case. The supreme court in *Mobile, etc., R. Co., v. Tenn.*, 153 U. S. 486, declined to state what would constitute reasonableness. In *Nashville, etc., R. Co. v. Taylor*, 86 Fed. 168, it was declared unreasonable to single out and subject a special class of persons to oppressive taxation. To constitute railroad property a special class and tax it disproportionately, this being the only railroad in the state, would probably ordinarily be held unreasonable.

CORPORATIONS—PRIVATE—DIRECTORS—TRUSTEES FOR STOCKHOLDERS.—STEWART V. HARRIS, 77 PAC. 277 (KAN.).—*Held*, that where a director buys stock of a stockholder, he occupies such a fiduciary relation to the stockholder as to require a full disclosure of matters affecting the value of the stock.

The directors are not trustees for either the corporation or its stockholders in the strict sense of the term. *Haspes v. Car Co.*, 48 Minn. 174; *Deaderick v. Wilson*, 8 Baxt. 108. They are agents of the stockholders as a body, and not individually. *Allen v. Curtis*, 26 Conn. 456; *Smith v. Hurd*, 12 Metc. 371; *Marshall, Corp.*, 565, 1022. The weight of authority is to the effect that in dealings between them and stockholders involving stock transfers, they are in the position of strangers. *Deaderick v. Wilson, supra; Board of Comm. v. Reynolds*, 44 Ind. 509; *Carpenter v. Danforth*, 52 Barb. 581. But these same cases imply that, as regards the management of corporate affairs, they are quasi-trustees for the stockholders. See also 3 *Pom. Eq. Jur.* 1090. And a very well reasoned opinion in *Oliver v. Oliver*, 118 Ga. 362, holds them to be so far fiduciaries toward the stockholders as to require, in the purchase of stock from them, a full disclosure of all material particulars. But purchases

in open market are perhaps to be distinguished from those at private sale. As against subscribers for stock, there must be a full disclosure in prospectuses of a company. *New Brunswick Ry. v. Muggeridge*, 1 Dr. & Sm. 363; *2 Pom. Eq. Jur.* 881; and for any failure in this respect the directors may be held. *Edgington v. Fitzmaurice*, 29 Ch. Div. 459; *Cent. Ry. v. Kisch*, L. R. 2 H. L. 99.

CRIMINAL LAW—FORMER JEOPARDY—SINGLENESS OF TRANSACTION.—MANN v. COMMONWEALTH, 80 S. W. 438 (KY.). Defendants broke into a house at night with intent to steal money, which they abstracted from the householder's pocket, and on his awakening shot him. *Held*, that the burglary and the shooting do not constitute a single transaction out of which two offences cannot be carved, so as to render a conviction of the shooting a bar to the prosecution of burglary.

The concurrence of opinion among the courts of the various states with the above decision is quite general. The same individual may at the same time and in the same transaction commit two or more distinct crimes, aud an acquittal of one will not be a bar to punishment for the other. *State v. Standifer*, 5 Porter 523. In *People v. Warren*, 1 Parker C. C. 338, a trial and acquittal on an indictment for an attempted killing of one was considered no bar to a subsequent indictment charging the same defendant with attempting to kill another by the same act. Nevertheless a decision essentially contrary to these was rendered by the court of Vermont in *State v. Damon*, 2 Tyler 390, but it is said in a note to *Archibald's Crim. Pr. & Pl.*, 112 to be against the weight of authority and repugnant to reason, and by *Bennett & Heard, L. C. C.*, 534 to be clearly not law.

CRIMINAL LAW—SECURING EVIDENCE—PARTICIPATION IN ACT BY HIM AGAINST WHOM IT IS COMMITTED.—PEOPLE v. MILLS, 70 N. E. 786 (N. Y.).—A district-attorney, being informed of a plot to make away with certain pending indictments, himself obtained them and secured their delivery to the accused by one of his agents, in pretended furtherance of the scheme. *Held*, that nevertheless the accused was guilty of the crime of stealing them. O'Brien and Bartlett, JJ., *dissenting*.

Consent to a crime by him against whom it is committed is ordinarily no defense. *Reg. v. Clisin*, 8 Car. & P. 418; 1 *Bish. Cr. Law*, 259. Nor can the participation avail where the accused has himself committed all the essential acts. *State v. Jansen*, 22 Kan. 498; *State v. Hayes*, 105 Mo. 76. Under this rule would fall those cases where the crime is more directly against the peace of the state and the agent, by becoming a party to it, furnishes the opportunity for its commission, as in the illegal sale of lottery tickets. *People v. Noelke*, 94 N. Y. 137. But where the crime is against an individual and he instigates it, there would seem to be no liability on the part of the accused. *O'Brien v. State*, 6 Tex. App. 665; *People v. McCord*, 76 Mich. 200; *King v. McDaniel*, 2 East P. C. 665. Nor where consent destroys an essential element of the crime; *People v. Liphardt*, 105 Mich. 80; 1 *Wharton, Cr. Law*, 751 i; even though the accused thinks the consenting person is acting merely as his agent. *Williams v. Ga.*, 55 Ga. 391. But passively to permit a crime to be committed does not prevent a conviction. *Warner v. State*, 72 Ga. 745; *State v. Jansen, supra*. And though consent may prevent conviction for one crime, it may not destroy another cognate to it which is involved in the same transaction. *Reg. v. Johnson*, Car. & M. 218.